

Habeas Corpus Rules



Habeas Corpus Rules

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LOCAL HABEAS CORPUS RULES ("LHCR")

LHCR 1Applicability.

All petitions for writs of habeas corpus (pursuant to 28 U.S.C. § 2254) and motions filed pursuant to 28 U.S.C. § 2255 shall be subject to the provisions of these Local Habeas Corpus Rules unless otherwise ordered by the Court.

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LHCR 2Form of Petition.

The petition or motion shall be in writing, accompanied by all territorial court opinions and judgments in the case, and signed under penalty of perjury, and, if presented in propria persona, upon the form and in accordance with the instructions approved by the Court. Copies of the forms and instructions shall be supplied by the clerk upon request. A petitioner who is unable to furnish the opinions and judgments in the case shall state why they are unavailable and where they may be obtained. If they are not furnished by petitioner, the respondent shall furnish them to the Court or state why such documents are not supplied.

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LHCR 3Filing in Forma Pauperis.

A petition or a motion to be filed in forma pauperis shall be accompanied by a declaration attached to the forms supplied by the Court. The declaration shall set forth information sufficient to establish that the petitioner or movant will be unable to pay the fees and costs or give security therefor.

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LHCR 4Filing - Copies.

An original and two copies of a petition for a writ of habeas corpus or a motion pursuant to 28 U.S.C. Section 2255 shall be filed.

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LHCR 5 Service of Copy.

If the petition or motion is filed in forma pauperis, the clerk shall serve a copy of the petition or motion on the United States Attorney or appropriate territorial officer.

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LHCR 6 Further Proceedings.

All proceedings subsequent to filing and service of the petition or motion shall be governed by these Local Habeas Corpus Rules and the Rules governing Section 2254 Cases or Section 2255 Proceedings in the United States District Courts. (Found in 28 U.S.C. following Sections 2254 and 2255.)

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LHCR 7Petitions by Territorial Prisoners.

All petitions by territorial prisoners shall state with specificity that all issues raised in the petition

(a) have been raised before all territorial tribunals in which the issues could be heard, to the exhaustion of the petitioner's territorial remedies, or

(b) have not been raised before all territorial tribunals in which the issues could be heard, along with all facts which justify the failure to exhaust territorial remedies.

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LHCR 8Petitions of Territorial Prisoners Requesting an Evidentiary Hearing.

All petitions by territorial prisoners, if the petitions request an evidentiary hearing, shall state that:

(a) Each issue of fact to be raised at the hearing has not been the subject of a territorial court evidentiary hearing in which a finding was made as to the fact in question, or

(b) For those issues that were raised in a prior territorial court evidentiary hearing, the territorial hearing was not a full and fair consideration of the issue of fact in question, along with all reasons why the territorial hearing was inadequate.

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LHCR 9All Petitions - Previous Rulings Contained.

All petitions shall state whether or not petitioner has previously sought relief arising out of the same matter from this Court or from any other federal court, together with the ruling and reasons given for denial of relief.

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LHCR 10Pretrial Conference and Order.

If a hearing, in which petitioner will be represented by counsel, is granted by the Court, a pretrial conference of Court and counsel shall be held and a Pretrial Order filed. The Pretrial Order should list all grounds for upsetting the conviction or sentence which appear relevant, whether or not raised in the petition or motion, as issues of fact to be tried at the hearing, along with related issues of law.

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LHCR 11Relief Granted - Clerk's Notification.

If relief is granted on a petition of a territorial prisoner or if any stay of execution of a territorial court judgment is issued by the Court, the clerk shall forthwith notify the territorial authority having jurisdiction over the prisoner of the action taken.

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LHCR 12Relief Denied - Stay of Execution Continued.

If relief is denied such territorial prisoner, and a certificate of probable cause is issued, the Court will also grant a stay of execution to continue in effect until such time as the Ninth Circuit Court of Appeals acts in the matter; and the clerk of this Court shall forthwith notify the Clerk of the Ninth Circuit Court of Appeals of the action taken.

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LHCR 13 Habeas Corpus - Exclusion and Deportation Cases.

A next friend petition for a writ of habeas corpus in exclusion and deportation cases must allege that the petitioner has been authorized by the applicant for admission or respondent in deportation proceedings to file the petition. If the petition is filed by a relative who is the father, mother, husband, wife, brother, sister, uncle or aunt of the applicant for admission or respondent in deportation proceedings, that fact shall be alleged and authorization to file the petition need not be shown.

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LHCR 14 Habeas Corpus - Exclusion or Deportation - Allegations.

Petitioner must state in detail what conduct of the exclusion or deportation authorities has deprived the applicant for admission or respondent in deportation proceedings of a fair hearing, and the reasons why the applicant or respondent is entitled to land or remain notwithstanding the order of exclusion or deportation. The petition must also allege:

- (a) That the petitioner or his attorney has learned the facts so stated from the files and records of the Immigration and Naturalization Service or the Department of Justice; or
- (b) That access to such records has been refused; or
- (c) That the interval between notice to the alien of deportation and the time of the proposed deportation is too short to allow any examination of the records.

If it is alleged that access has been refused, the petition must state when the application for access was made, by whom, and the identity of the official refusing the inspection.

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